No. 86-631

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1986

CITY OF WATSEKA, COUNTY OF IROQUOIS and STATE OF ILLINOIS, A Home Rule Municipality, and ERNEST A. GROVE, Mayor of Watseka, Individually and in his official capacity,

Plaintiffs-Appellants,

v.

ILLINOIS PUBLIC ACTION COUNCIL and AMERICAN CIVIL LIBERTIES UNION,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION TO AFFIRM

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QUESTION PRESENTED

The question presented by this appeal is:

Did the Court of Appeals correctly hold that an ordinance prohibiting all door-to-door canvassing, irrespective of the wishes of the resident, between 5:00 P.M. and 9:00 P.M., by any person or organization including not-for profit advocacy organizations, is an unreasonable time, place and manner restriction on important First Amendment rights?

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	iii
Motion to Affirm	1
Statement of the Case	2
Argument	5
I. WATSEKA'S ORDINANCE IS AN UNCONSTITUTIONAL TIME, PLACE AND MANNER REGULATION	5
A. The Seventh Circuit Properly Held That the Ordinance is Not Narrowly Tailored to Effectively Serve Watseka's Legitimate Interests	9
1. The Crime Control Interest	9
2. The Privacy Interest	11
B. The Seventh Circuit Properly Found That Watseka's Scheme Failed to Leave Open Ample Alternative Channels of Communication	12
II. THERE IS NO CONFLICT AMONG THE CIRCUITS	13
Conclusion	16

TABLE OF AUTHORITIES

Cases: *Page*

Association of Community Organizations for Reform Now v. City of Frontenac, 714 F.2d 813 (8th Cir. 1983) 13

Breard v. City of Alexandria, 341 U.S. 622 (1950) 8

Cantwell v. Connecticut, 310 U.S. 296 (1950) 10

City of Renton v. Playtime Theatres, ___ U.S. ___, 106 S.Ct. 925 (1986) 11

Connecticut Citizens Action Group v. Southington, 508 F.Supp. 43 (D. Conn. 1980) 13

Cornelius v. NAACP Legal Defense Fund, 473 U.S. ___, 105 S.Ct. 3439 (1985) 7, 8

Hynes v. Mayor of Oradell, 425 U.S. 610 (1976) . 6

Kunz v. New York, 340 U.S. 290 (1951) 11

Lloyd Corp. v. Tanner, 407 U.S. 551 (1972) 7

Martin v. City of Struthers, 319 U.S. 141 (1943) . 6, 12

Members of the City Council v. Taxpayers for Vincent, 466 U.S. 786 (1984) 8, 10

New Jersey Citizens Action v. Edison Township, 797 F.2d 1250 (2d Cir. 1986), *petition for rehearing with suggestion for rehearing en banc denied* (Sept. 25, 1986) 14, 15

New York Community Action Network v. Hempstead, 601 F.Supp. 1006 (E.D. N.Y. 1984) . . . 13

Pennsylvania Alliance for Jobs and Energy v. Council of Munhall, 743 F.2d 182 (3d Cir. 1984) 3, 14, 15

Pennsylvania Public Interest Coalition v. York Township, 569 F.Supp. 1398 (M.D. Pa. 1983) 13

Rowan v. United States Post Office Dep't, 397 U.S. 728 (1970) 7

Schneider v. State, 308 U.S. 147 (1939) 6, 10

Secretary of State v. Joseph H. Munson Co., 467 U.S. 947 (1984) 6

Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, *rehearing denied*, 445 U.S. 972 (1980) 3, 6, 8, 10, 13

Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748 (1976) 8, 11

Westfall v. Board of Commissioners, 477 F.Supp. 862 (N.D. Ga. 1979) 13

Wisconsin Action Coalition v. Kenosha, 767 F.2d 1248 (7th Cir. 1985) 13

Constitution:

United States Constitution, Amendment I ..... *passim*

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MOTION TO AFFIRM

In this Motion to Affirm Appellee Illinois Public Action Council ("IPAC") submits that the questions raised by Watseka's Jurisdictional Statement are either so insubstantial or clearly resolved by prior decisions of this Court that the decision below should be summarily affirmed. Watseka's ordinance is an infringement of IPAC's First Amendment activities because it is not a valid time, place and manner regulation. Contrary to Watseka's suggestion, the Circuit Courts of Appeal are in agreement that when political speech rights are abridged and no particular and substantial need had been demonstrated, early evening

canvassing prohibitions are unconstitutional. The decision of the Court of Appeals for the Seventh Circuit is correct. The judgment below should be summarily affirmed.

STATEMENT OF THE CASE

The merits of this case were before the District Court on cross-motions for summary judgment. The court found that the material facts were "simple and undisputed." (App. 76, 627 F. Supp. at 28.)[1]

Watseka's challenged ordinance was passed in 1979. Section 19-9 of the ordinance prohibits door-to-door solicitation after 5:00 P.M. and before 9:00 A.M., Monday through Saturday. No canvassing is permitted on Sunday. Under the ordinance, even a solicitor who is expressly invited to visit a resident may not do so after 5:00 P.M. or on a Sunday.[2] The ordinance also provides a system of registration for solicitors, and allows individual residents to prohibit all solicitation at any hour by posting "No Solicitors" signs, or to limit solicitors to only those who have registered with the City. (App. 26-27, Watseka Ordinances sections 9-2 through 19-5.) IPAC canvassers comply with registration requirements and respect "No Solicitors" signs.[3]

Illinois Public Action Council is a not-for-profit Illinois corporation, representing low and moderate income persons before Congress, the Illinois Legislature and the Illinois Commerce Commission on issues of utility, energy and tax policy, and economic development. Its activities

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[1] "App. ___" refers to the Appendix to Watseka's Jurisdictional Statement. The District Court's decision is reported at 627 F. Supp. 27 (C.D. Ill. 1984), and the appellate decision is reported at 796 F.2d 1547 (7th Cir. 1986).

[2] The ordinance also prohibits expression on public sidewalks if it is "calculated to attract the attention of the occupant" of a residence. (App. 27, Watseka Ordinances section 19-8.)

[3] IPAC does not challenge the registration requirement or the provisions for the posting of signs.

include canvassing to obtain new members and citizen support for its issues, mobilizing letter-writing campaigns and other means of communicating with public officials, and public education programs. The purposes of IPAC's canvass include educating the public about its issues and positions, membership recruitment including seeking newsletter subscriptions and financial contributions, and identification of voters and others who will work or vote for IPAC-endorsed candidates and positions. (R. 18.)

In seeking to fulfill its goals, it is essential that IPAC establish face-to-face contact with citizens to discuss issues, and to garner citizen support. By this personal contact, IPAC is able to provide written information, answer questions, and obtain signatures on its petitions. (R. 18.) IPAC canvasses only from 4:00 P.M. until 9:00 P.M. Its experience has shown that this is the only feasible time to canvass.[4] In proving its entitlement to damages, IPAC showed that it had attempted Saturday solicitation but was

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[4] This Court has recognized that groups using paid solicitors who engage in advocacy as well as seek financial support may have higher administrative costs than other groups. *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 634, *rehearing denied*, 445 U.S. 972 (1980). Thus, for such groups to be able to engage in door-to-door canvassing at all, their agents must be able to make a minimum number of contacts. The number of contacts per hour expands greatly throughout the early evening hours. IPAC showed that from 4:00 P.M. to 5:00 P.M., a canvasser averages five contacts; from 5:00 to 6:00 P.M., six contacts; from 6:00 to 7:00 P.M., 12 contacts; from 7:00 to 8:00 P.M., 18 contacts; from 8:00 to 9:00 P.M., 20 contacts. In fact canvassers are often asked to return after 7:00 P.M. to speak to particular household members. (R. 18.)

IPAC's evidence conforms to the experiences of the United States Bureau of the Census. As noted *Pennsylvania Alliance for Jobs and Energy*, 743 F.2d 182, 195 n.17 (3d Cir. 1984) (Becker, J., dissenting) the Bureau's 1972 study "show(s) that the

(Footnote continued on the following page)

unsuccessful because too few people were at home[5] (R. 39, Tr. 34-35.)[6] IPAC's factual submissions were not contested by Watseka.

In contrast to IPAC's particularized showing, Watseka's factual submissions supporting its Motion for Summary Judgment consisted of statistics concerning crime rates in the State of Illinois for differing times of day and night in 1981. None of the statistics revealed information about fraud, or about any crimes purportedly committed by persons posing as canvassers, either in Watseka or elsewhere. The city also submitted affidavits of its Mayor and several citizens, consisting largely of "conclusory assertion[s] by an interested party . . . unsupported by any statistics or firsthand knowledge . . . ." (App. 19, 796 F.2d at 1556.)

The District Court granted IPAC's motion for summary judgment and denied Watseka's, ruling that Watseka's ordinance unduly burdened IPAC's First Amendment rights, particularly given the existing means available to protect its residents from crime and unwanted canvassers. (App. 83-84, 627 F. Supp. at 30.) The United States Court of Appeals for the Seventh Circuit affirmed. The appellate court specifically noted Watseka's

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4 *(Continued)*

probabilities of reaching many individuals via door-to-door solicitation increases substantially when canvassing is conducted in the evening hours." Data from the study established that "a solicitor in a town without a restrictive ordinance could be 50 percent more effective. *See* United States Bureau of the Census, *Who's Home When* (1972)." *Id.*

[5] Contrary to Watseka's implication (Juris. Statement at 20, 34), IPAC has never argued simply that it is more "convenient" for it to solicit in the evening. Rather, daytime solicitation is plainly unfeasible.

[6] (Tr. ___ refers to the transcript of the trial held on the measure of IPAC's damages.)

failure to provide any evidence of its crime rate, to link nighttime crime to solicitation, to show that the prohibition prevented fraud, to show how it protected privacy, and to offer any evidence that its objectives were not satisfactorily served by other existing laws including the traditional use of trespass prosecutions. (App. 17-20, 796 F.2d at 1556-57.)

ARGUMENT

This case presents the Court with a municipal ordinance which absolutely prohibits a single expressive activity, door-to-door canvassing when coupled with a request for financial support, at all times after 5:00 P.M. and before 9:00 A.M. Monday through Saturday. There is no doubt that each Watseka resident may *absolutely prohibit* speech on his or her own property. Watseka expressly recognizes this right in its provision authorizing homeowners to post signs prohibiting canvassers at any or all times, at their discretion. IPAC fully endorses and respects this right. The issue presented in this case is quite different. It is whether Watseka can make the decision, for IPAC and for every one of Watseka's residents, that no canvasser may call after 5:00 P.M. Watseka undoubtedly may adopt reasonable regulations governing the hours of canvassing. That some time regulations are reasonable does not mean that all time regulations are reasonable, however. In this case, Watseka has drawn the line at unreasonably early hour.

I. WATSEKA'S ORDINANCE IS AN UNCONSTITUTIONAL TIME, PLACE AND MANNER REGULATION.

IPAC's First Amendment interests are well-established. IPAC canvasses door-to-door to obtain new members and citizen support for its issues, and educate the public on issues of utilities, energy and tax policy, and economic development. This Court has consistently recognized the substantial First Amendment speech and associa-

tional interests at stake:

> . . . a variety of speech interests - - communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes - - . . . are within the protection of the First Amendment. Soliciting financial support is undoubtedly subject to reasonable regulation but the latter must be undertaken with due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues, and for the reality that without solicitation the flow of such information and advocacy would likely cease.

Village of Schaumburg v. Citizens for A Better Environment, 444 U.S. 620, 632, *rehearing denied*, 445 U.S. 972 (1980). *See also Secretary of State v. Joseph H. Munson Co.*, 467 U.S. 479 (1984); *Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976); *Martin v. City of Struthers*, 319 U.S. 141 (1943); *Schneider v. State*, 308 U.S. 147 (1939).

The First Amendment right to dissseminate ideas carries with it a corollary right to receive information. *Village of Schaumburg v. CBE*, 444 U.S. at 632; *Martin v. City of Struthers*, 319 U.S. at 143. Accordingly, the rights of Watseka citizens who would willingly receive IPAC's message are also abridged by the ordinance.

In *Martin v. City of Struthers*, *supra*, the city attemped to decide for all its residents that no messages from door-to-door canvassers would be received. The Court recognized that door-to-door canvassing is a traditional form of communication and the very important traditional power of the homeowner:

> Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household, and not upon the determination of the community.

319 U.S. at 141. In *Struthers*, as here, the municipality

argued that its scheme was justified as a crime control measure and to protect its citizens' privacy. While acknowledging that door-to-door activity could be "either a nuisance or a blind for criminal activities," 319 U.S. at 145, the Court held that the these were not sufficient concerns to validate the ordinance in light of the availability of trespass laws and other measures which "leave[s] the decision as to whether distributors of literature may lawfully call at home where it belongs - - with the homeowner." 319 U.S. at 148.[7]

In analyzing Watseka's ordinance to ascertain whether it was a reasonable time regulation, the Seventh Circuit asked whether the ordinance (1) is content-neutral, (2) is narrowly tailored to serve a legitimate governmental interest, and (3) leaves open ample alternative channels of communication. (App. 11, 796 F.2d at 1552.) The Seventh Circuit held that the last two requirements were not met.

Watseka argues that the ordinance need not be narrowly tailored nor leave open alternative channels of communication. (Juris. Statement at 23-24.) Its argument is based on the theory that, because no conventional "First Amendment forum" - - that is, no government property - - is involved, the appropriate inquiry is only whether the ordinance is "reasonable." (*Id.*) Watseka relies on *Cornelius v. NAACP Legal Defense and Education Fund*, 473 U.S. ___, 105 S.Ct. 3439 (1985), which held that restrictions on participation in a charitable fund drive con-

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[7] In its Jurisdictional Statement, Watseka relies on several cases that illustrate how the decision to control speech on private property, or to ban it absolutely, belongs to the owner. In *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972) the Court left control of speech in a privately-owned shopping center in the hands of its owner. Similarly, *Rowan v. United States Post Office Dept.*, 397 U.S. 728 (1970) recognized the right of the potential recipient to have his or her name removed from a mailing list, to control receipt of particular messages.

ducted in the federal workplace need only be reasonable, since the forum was a "nonpublic" one. That theory was appropriately rejected by the appellate court as "meritless." (App. 11, 797 F.2d at 1552 n. 12.)[8]

Indeed, this Court has repeatedly held that door-to-door canvassing by advocacy organizations like IPAC is entitled to the highest First Amendment protection. *See, e.g., Schaumburg,* 444 U.S. at 632; and *Members of the City Council v. Taxpayers for Vincent,* 466 U.S. 786, 812 n. 30, concluding that:

> [T]he Court has shown special solicitude for forms of expression that are much less expensive than feasible alternatives and hence may be important to a large segment of the citizenry, *see e.g., Martin v. Struthers* [citations omitted] ("door-to-door distribution of circulars is essential to the poorly financed causes of little people").

See also Cornelius itself, noting that "in *Village of Schaumburg* the Court struck down a local ordinance prohibiting solicitation in a *public forum*. . . ." 473 U.S. at ___, 105 S.Ct. at 3447 (emphasis added).[9]

As we show below, the appellate court properly applied the appropriate time, place and manner analysis to the facts of this case. Its decision should be affirmed.

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[8] *Cornelius* concerned the government's regulation of its own forum and the government's intention in its creation. It had nothing to do with the rights of people to communicate with each other on non-public property to which the owner had not prohibited access.

[9] Watseka's reliance on *Breard v. City of Alexandria,* 341 U.S. 622 (1950) is similarly misplaced. That case concerned a prohibition on purely commercial speech - - far removed from the political advocacy engaged in by IPAC. Moreover, the continuing validity of *Breard* has been placed in doubt by subsequent decisions of this Court. *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council,* 425 U.S. 748, 758-60 (1976). *See also Schaumburg,* 444 U.S. at 633 n.7.

A. The Seventh Circuit Properly Held That the Ordinance is Not Narrowly Tailored to Effectively Serve Watseka's Legitimate Interests.

The Seventh Circuit held Watseka failed to show that its ordinance is narrowly tailored to serve its interests.

1. The Crime Control Interest

The record is devoid of any facts showing a connection between door-to-door solicitation after 5:00 P.M. and crime. The appellate court summarized Watseka's failure to connect its ordinance to crime control:

> . . . Watseka failed to present any evidence of its own crime rate (or whether its nighttime crime rate went down during the three years the ordinance was in effect). Watseka failed to offer any evidence of its crime rate between 5:00 P.M. and 9:00 P.M. Watseka failed to in any way link the evidence on nighttime crime to solicitation (i.e., there is no evidence either of any crime being perpetrated by alleged solicitors or of differences in crime rates when no solicitation takes place). Finally, Watseka failed to offer any evidence to substantiate its claim that the ordinance lessened the burden on its police force which it claimed unregulated soliciting caused. Watseka failed to offer any explanation why the people who came within the ordinance's definition of soliciting posed any greater burden on the police, or threat of crime, than the numerous other visiting strangers that the ordinance did not purport to cover.

(App. 18, 796 F.2d at 1555-56.) The Seventh Circuit stressed the arbitrary nature of the 5:00 P.M. cut-off and its lack of relationship to crimes committed under cover of darkness, noting that the 5:00 P.M. cut-off does not coincide with dusk during 75% of the year in Watseka. (App. 17-18, 796 F.2d at 1555.)

Surely Watseka may not restrict the rights of all organizations or persons who seek to solicit between 5:00

P.M. and 9:00 P.M. on the speculation that a tiny percentage of would-be solicitors are actually soliciting as a front for crime. As in *Schaumburg*, the prohibition here is related to the asserted interest "only in the most modest of ways" and Watseka's "refusal to employ more precise measures" to directly control crime renders the ordinance void.[10] 444 U.S. at 637.

Effective measures to protect against crime which do not suppress speech have been repeatedly noted by this Court in other canvassing cases. In *Schaumburg*, this Court held that the city could use its penal laws to punish fraud, and could require financial disclosure. 444 U.S. at 637-38. In *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1950), the Court noted the availability of penal laws to punish fraudulent solicitors. *See also Virginia Pharmacy Board v. Virginia Citizens Consumer*

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[10] In *Members of the City Council v. Taxpayers for Vincent*, 466 U.S. 786 (1984), the Court used *Schneider v. State*, 308 U.S. 147, as an example of a regulation drawn in an insufficiently narrow manner. The evil sought to be regulated in *Schneider* was littering; that evil, however, was only a by-product of protected leafletting. Littering itself could be precisely and directly addressed. 466 U.S. at 809-10. Moreover, in *Schneider*, it was reasonable to speculate that littering was a by-product of the protected expression. The regulation in *Schneider* was invalid because it prohibited the expression, but was aimed at its by-product. In contrast, in *Vincent*, the expression itself (posters on telephone poles) was the direct source of the substantive evil (visual blight) sought to be regulated. The statute in *Vincent* was sufficiently narrowly tailored for a non-public forum regulation because it aimed directly at the problem, and prohibited the posters. 466 U.S. at 810. Here, the "evil" is that some people commit crimes after dark at other people's homes. But those crimes have not been shown to be a by-product of evening canvassing. Thus, the regulation here is even more attenuated than that stricken in *Schneider*. Watseka's legitimate interest in crime control is only "peripherally promoted" by the early evening prohibition. *Schaumburg*, 444 U.S. at 636.

Council, 425 U.S. 748, 771-72 (1976) (state may deal effectively with deceptive or misleading commercial speech without prohibiting advertising). Watseka also has available a wide variety of "appropriate public remedies", *Kunz v. New York,* 340 U.S. 290, 294 (1951), such as laws against trespass, robbery, burglary and other offenses to the person and property. The presentation of a valid registration certificate offers an additional safeguard. Since Watseka "failed to offer evidence that its legitimate objective of preventing crime cannot be served satisfactorily by enforcing" its other laws (App. 21, 726 F.2d at 1557), it failed to demonstrate the required precision necessary to avoid a violation of the First Amendment.[11]

2. The Privacy Interest

The ordinance similarly is not precisely tailored with respect to the privacy interest. The ordinance applies only to those door-to-door callers who engage in what Watseka defines as "solicitation." (R. 16, Watseka Ordinances section 19-1.) Thus, persons and organizations who do not seek contributions (perhaps because they represent well-heeled interests) are exempt from the 5:00 P.M. cut-off. There is nothing in the record to suggest, however, that Christmas carolers or house-to-house market researchers are any less intrusive to Watseka's citizens than are IPAC canvassers.

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[11] Contrary to the dissent's suggestion (App. 65, 796 F.2d at 1580), *City of Renton v. Playtime Theatres,* ___ U.S. ___, 106 S.Ct. 925 (1986) does not require a different result. In that case the Court noted that a municipality need not "conduct new studies or produce evidence independent of that already generated by other cities . . . ", to support a time, place and manner restriction. 106 S.Ct. at 931. However, Watseka relies on evidence completely unrelated to whether persons posing as door-to-door evening canvassers commit crimes. Because the evidence is not "relevant to the problem the city addresses," *Renton,* 106 S.Ct. at 931, Watseka cannot relie on it to justify this restriction.

Watseka presently has in place a number of measures that amply protect privacy interests. Watseka has a comprehensive registration and certification scheme (Watseka Ordinances Sections 19-2 through 19-4), and a method for residents to post signs indicating their desire to be contacted only by solicitors registered in Watseka, or by no solicitors at all. (App. 26-27, Watseka Ordinances sections 19-6 through 19-8.)

Contrary to the dissent's suggestion (App. 68-69, 796 F.2d at 1581), the evil which Watseka seeks to regulate is the *unwelcome* canvasser, not *every* canvasser. That evil is unquestionably protected by the sign provision, for a homeowner may prohibit all solicitors or unregistered solicitors, or solicitors at particular hours, by deciding whether and when to post a sign, and determining what that sign prohibits.

These valid measures, together with trespass laws available against a solicitor who violates the sign or who remains despite the resident's expressed wishes, are ample ways to protect the privacy of Watseka's citizens while not curtailing IPAC's First Amendment rights. (App. 19, 796 F.2d at 1557.) In addition, they leave the decision "at home where it belongs -- with the homeowner." *Martin v. City of Struthers,* 319 U.S. at 141.

B. The Seventh Circuit Properly Found That Watseka's Scheme Failed to Leave Open Ample Alternative Channels of Communication.

Watseka argued below that IPAC had several alternatives available to it such as canvassing in public places, during the daytime, by mail, or by phone. (App. 22, 796 F.2d at 1557.) It submitted no evidence concerning these alternatives, however, and IPAC's uncontradicted evidence showed that they were neither ample nor adequate. (App. 22, 796 F.2d at 1558.) Moreover, "IPAC presented testimony that other methods . . . are more ex-

pensive and less effective than in-person solicitation at the citizen's residence." *Id.* While Watseka is not required to provide IPAC the most economical form of exercising its rights, *Renton,* 106 S.Ct. at 932, the channels it leaves open must at least be reasonable ones. No reasonable alternatives have been identified here.

Watseka may regulate the hours of door-to-door solicitation. In determining at what hour solicitation may be banned, however, Watseka has not acted reasonably. This Court need not determine whether 9:00 P.M. or 10:00 P.M. or some other point is the constitutionally permissible line, for clearly the 5:00 P.M. cutoff - - and the absolute bar against any Watseka citizen inviting solicitors after that hour - - is unconstitutional.

II. THERE IS NO CONFLICT AMONG THE CIRCUITS.

Watseka argues that this Court should hear its appeal because there is a conflict among the Circuit Courts as to the constitutionality of evening solicitation prohibitions. (Juris. Statement at 26-29.) That is simply not the case: each of the Circuits that has passed on the issue has held that these ordinances run afoul of the First Amendment.[12]

The Seventh Circuit, in *Wisconsin Action Coalition v. Kenosha,* 767 F.2d 1248 (1985) and in the instant case; the Eighth Circuit, in *Association of Community Organizations for Reform Now v. City of Frontenac,* 714

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[12] The District Courts are also in agreement. *New York Community Action Network v. Hempstead,* 601 F. Supp. 1066 (E.D.N.Y. 1984); *Pennsylvania Public Interest Coalition v. York Township,* 569 F. Supp. 1398 (M.D. Pa. 1983); *Connecticut Citizens Action Group v. Southington,* 508 F. Supp. 43 (D. Conn. 1980). The single exception is *Westfall v. Board of Commissioners,* 477 F. Supp. 862 (N.D. Ga. 1979), a case decided prior to *Schaumburg* that has been criticized by a number of courts.

F.2d 813 (1983); and most recently the Third Circuit, in *New Jersey Citizens Action v. Edison Township,* 797 F.2d 1250 (3rd Cir. 1986), *petition for rehearing and suggestion for rehearing en banc denied* (Sept. 25, 1986), (*"NJCA"*) are all in accord that ordinances prohibiting evening solicitation violate the First Amendment rights of canvassers.

Watseka cites *Pennsylvania Alliance for Jobs and Energy v. Council of Munhall,* 743 F.2d 182 (3d Cir. 1984) (*"PAJE"*) which preceeded *NCJA* and sustained an evening solicitation prohibition. However, the panels in *PAJE* and *NJCA* employed the same legal standard: each asked whether the ordinance was a reasonable time, place and manner regulation. The difference in result between *PAJE* and *NJCA* is explained by the difference in the evidence before each panel.

In *PAJE,* there was evidence that the ordinances were "precisely drawn." The court found "significant" incidents of burglary and other crimes in the defendant cities. 743 F.2d at 187. In *NJCA,* as here, the city produced no evidence to support a correlation between canvassing and crime, and there was expert testimony of "absolutely no correlation" between crime rates and the existence of the ordinances. 797 F.2d at 1257-58. Indeed, the *NJCA* panel concluded that *"[g]iven the record in this case,* . . . we believe the district court was *obliged* to find that the regulations . . . are not precisely tailored." *Id.* at 1259 (emphasis added).

The conclusions also diverge in the results of the "ample alternative channels" test as applied to two differing factual records. In *PAJE,* plaintiffs offered no evidence that the alternatives identified by the municipalities were not ample or adequate. 743 F.2d at 187-88. In contrast, in *NJCA* as in the instant case there was detailed evidence about the inadequacies of the identified alternatives. 797 F.2d at 1261. The *NJCA* court concluded:

> Nothing in *PAJE* suggests that when evidence is adduced that supports the district court's finding that the existing channels are inadequate to satisfy the needs of the canvassers, the court is nonetheless compelled to find that there are alternatives that meet the [ample alternative channels] inquiry. Such a construction would make a mockery out of the inquiry itself.

797 F.2d at 1262.

In sum, the differing results in *PAJE* and *NCJA* are explained by the insufficient factual proof. The *NCJA* panel realized that to hold all future canvassers forever bound by the evidentiary record of the first group of plaintiffs would be an absurd result.

CONCLUSION

The Seventh Circuit correctly found that Watseka's ordinance is an unreasonable time, place and manner regulation. Contrary to Watseka's assertion, there is no conflict among the circuits. The proper application of the time, place and manner test to a sufficiently developed factual record showing injury to important speech interests has resulted in courts uniformly holding them unconstitutional absent a showing of particular and substantial need, which was not made below. The Seventh Circuit's decision should be affirmed.

Respectfully submitted,

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